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No. 76-1418

IN THE

Supreme Court of the United States

October Term, 1976

COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, *et al.*,
Petitioners,

v.

RUDOLPH A. RICHARDS, *et al.*
Respondents

On Petition for a Writ of Certiorari to the Supreme Court of Virginia

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF AMICI CURIAE IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI BY CERTAIN ORGANIZATIONS AND INDIVIDUALS FROM ARLINGTON COUNTY AND SURROUNDING JURISDICTIONS.

WILLIAM H. ALLEN
ROBERT M. SUSSMAN
888 Sixteenth St., N.W.
Washington, D.C. 20006
Attorneys for Amici Curiae

Of Counsel:
COVINGTON & BURLING

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MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

The organizations and individuals named in the margin ask leave to file the accompanying brief amici curiae in support of the petition for certiorari.[1] Petitioners have consented to the filing of the brief. Respondents withheld their consent.

The movants are twenty-three citizens associations and environmental groups from the District of Columbia, Arlington County, Virginia, and Montgomery County, Maryland, and eleven individuals who have been elected to serve as Advisory Neighborhood Commissioners in the District of Columbia.

[1]D.C. Federation of Civic Associations; Federation of Citizens Associations of the District of Columbia; Upper Northeast Coordinating Council; Wisconsin Avenue Cooridor Committee; Committee

(continued)

The movants from Arlington County represent Aurora Highlands, where the Arlington ordinance at issue in this case has been implemented, and another Arlington neighborhood that is eligible to become a permit parking area under that ordinance. As a result, both associations have a compelling interest in seeing that the decision of the Supreme Court of Virginia challenged by petitioners is reversed and the validity of the Arlington ordinance sustained.

The Maryland and District of Columbia movants all represent communities where permit parking programs similar to Arlington's have been enacted and implemented. Both in Maryland and the District of Columbia, litigation is underway attacking the validity of these programs, and in both jurisdictions lower courts have ruled that the programs are unconstitutional. Without a decision from this Court sustaining the validity of Arlington's ordinance, the future of permit parking in both Maryland and the District of Columbia will be in serious jeopardy. It is a measure of their commitment to defending permit parking that three of the movants have been granted leave to intervene in the District of Columbia litigation where that jurisdiction's program is now under attack. Pursuant to Rule 42 of

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of 100 on the Federal City; Metropolitan Washington Coalition for Clear Air, Inc.; Aurora Highlands Civic Association; Arlington Ridge Civic Association; Brookland Civic Association; Burleith Civic Association; Capitol Hill Restoration Society; Foggy Bottom Association; Forest Hills Citizens Association; Foxhall Community Citizens Association; Friendship Neighborhood Coalition; Gateway Community Association; Glover Park Citizens Association; Neighbors, Inc.; Sheridan-Kalorama Neighborhood Council; Stanton Park Neighborhood Association; East Bethesda Citizens Association, Inc.; Bethesda Coalition; Parking Action Group of Takoma Park; Harold Davitt; Marthlu Bledsoe; William Middleton; Charles Clinton; Carol Currie Gidley; Mary Barry; Eleanor Hansen; Evelyn Wrin; Mary Alice Branch; Anton Wood; and Raymond Gooch.

this Court's rules, leave to file the accompanying brief should be granted.

WILLIAM H. ALLEN
ROBERT M. SUSSMAN
888 Sixteenth St., N.W.
Washington, D.C. 20006
Attorneys for Movants

Of Counsel:
COVINGTON & BURLING

April 1977

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BRIEF OF AMICI CURIAE

STATEMENT

At issue in this case is a program adopted by Arlington County, Virginia, to combat the congestion of its residential neighborhoods with the parked cars of commuters. In Arlington, as in numerous other urban centers, large office complexes have been built next to residential communities, and the workforce at these complexes has taken advantage of the free parking available on nearby residential streets. Inevitably, the resulting influx of commuter vehicles has caused safety hazards, littering, noise, and an absence of on-street parking for residents and their guests.

Like many other jurisdictions, Arlington has responded to this threat to the quality of life in some of its residential neighborhoods by enacting an ordinance that at once seeks to lessen parking congestion and contribute to the

abatement of air pollution in the surrounding metropolitan area. The ordinance, contained in an amendment to the County's zoning regulations, empowers the County Manager to limit parking in designated neighborhoods during weekday business hours to vehicles displaying permits. Permits can be issued only to residents of the area, their visitors and persons doing business with them. (Pet. 24a-28a.)[1] These restrictions may be imposed when the county manager has determined that, on weekdays during any given month, more than 75 percent of the on-street parking spaces in the neighborhood have been occupied and at least 25 percent of the parked cars have been operated by persons bound for commercial or industrial establishments.

The preamble to the ordinance declares that it is designed to protect several aspects of the quality of life in residential areas congested by commuter parking. Among these stated purposes are:

> "to reduce hazardous traffic conditions resulting from the use of streets within areas zoned for residential uses for the parking of vehicles by persons using districts zoned for commercial or industrial uses or the conditional uses allowed in Special Districts under the Zoning Ordinance of Arlington County; to protect those districts from polluted air, excessive noise, and trash and refuse caused by the entry of such vehicles; to protect the residents of those districts from unreasonable burdens in gaining access to their residences; to preserve the character of those districts as residential districts; to promote efficiency in the maintenance of those streets in a clean and safe condition; to preserve the value of the property in

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[1] Page references in parentheses are to the Appendices of the Petition for a Writ of Certiorari filed by the County Board of Arlington County.

> those Districts; and to preserve the safety of children and other pedestrians and traffic safety, and the peace, good order, comfort, convenience and welfare of the inhabitants of the County." (Pet. 25a.)

The first and only Arlington neighborhood where the ordinance has been implemented is Aurora Highlands. This residential community adjoins a complex of high-rise office buildings known as Crystal City where approximately 20,000 persons work. (Pet. 4a.) The portion of Aurora Highlands designated as a permit parking zone consists of three streets that contain one apartment building and several duplex and single family homes, a number of which totally lack off-street parking. (*Id.*) Soon after the ordinance became effective, this action was commenced by several commuters who work at Crystal City and have been accustomed to parking on Aurora Highlands' streets. Among their grounds for attacking the ordinance, the commuters claimed that it denied them the equal protection of the laws in violation of the Fourteenth Amendment.

At the trial conducted in the Arlington County Circuit Court, the County demonstrated the serious problems that commuter parking had created for some of Arlington's residential neighborhoods and then proceeded to show the effectiveness of the ordinance in eliminating those problems during its limited operation in Aurora Highlands. Before the ordinance was implemented, the County established, commuter parking in Aurora Highlands had been "bumper-to-bumper." (Rec. 340.)[2] The substantial traffic along neighborhood streets as commuters searched for parking spaces had increased noise levels and threatened the safety of pedestrians, including small children on their way to and from school. (Rec. 174-75, 225,

[2] "Rec." refers to Appellant's Appendix filed with the Supreme Court of Virginia on appeal below.

240, 342, 372, 435.) This influx of outsiders had the further effect of increasing littering, often on residents' lawns, and impairing the County's ability to perform routine maintenance and repair functions on neighborhood road surfaces. (Rec. 177, 180, 234, 340, 356-58, 371, 397.) Moreover, because of the intense demand for limited numbers of parking spaces, numerous parking violations had occurred. Cars frequently blocked hydrants and driveways, and prohibitions on parking at the edge of intersections were often ignored, thus jeopardizing the safety and convenience of residents. (Rec. 234, 244, 331-33, 343-44, 363, 374, 386.)

Extensive parking by commuters on Aurora Highlands' streets also had the effect of drastically reducing the parking spaces available to neighborhood residents. For residents without driveways, the County showed, this loss of on-street parking imposed especially heavy burdens. (Rec. 371, 384, 477.) But also seriously inconvenienced were the many residents whose visitors and deliverymen were forced to park several blocks away from their destinations. (Rec. 179, 233, 242-43, 333, 352, 371, 387, 397, 499, 477.) The County's expert witnesses testified that, after three or four more years, continued parking congestion could be expected to cause a serious deterioration in the quality of Aurora Highlands as a neighborhood, and property values might well decline substantially as a result. (Rec. 253-54, 425, 483, 485.)

The success of the ordinance in eliminating the problems caused by parking congestion was dramatic. Residents testified that, while the ordinance was in effect, Aurora Highlands was a different and far more pleasant place — with its streets no longer crowded by automobiles, noise and littering significantly reduced, the safety of pedestrians improved and an atmosphere of tranquility that residents had not experienced since Crystal City had been built several years before. (Rec. 347, 358, 372, 398.)

The County presented evidence at trial that, in addition to its considerable benefits to Arlington neighborhoods, its permit parking ordinance is part of a region-wide strategy for curbing automobile use by commuters and thereby improving air quality. (Rec. 259-296.) Under Section 110 of the Clean Air Act, 42 U.S.C. § 1857c-5, the states and District of Columbia are required to submit to the Environmental Protection Agency plans for meeting EPA's national ambient air quality standards. When compliance with these standards cannot be achieved merely by regulating stationary pollution sources, EPA has required states to adopt various transportation control measures, including a strategy for reducing the total vehicle miles travelled in the air quality region. 38 Fed. Reg. 30626 (1973). As part of such a strategy, EPA has recommended restrictions on commuter parking that will encourage the greater use of mass transit. *Id.* at 30629.

Acting under this regulatory scheme, in late 1973 EPA issued a unified transportation control plan for the District of Columbia and the portions of Maryland and Virginia that together constitute the National Capital Interstate Air Quality Control Region. 38 Fed. Reg. 33702 (1973). As an integral element of this plan, EPA expressly urged local jurisdictions to ban on-street parking by commuters and institute a permit system that would reserve available on-street parking for residents. *Id.* at 33707. An EPA representative, testifying at the trial below, stated that, pursuant to the provisions of the National Capital Region plan, Arlington's permit parking ordinance had been reviewed and then endorsed in writing by EPA. (Rec. 270-271; Pet. 28a-29a.)

Despite its recognition that it "had the benefit of the testimony of transportation experts, planners, ecologists, and a representative of the Environmental Protection Agency" (Pet. 21a), the trial court made no findings of fact regarding the conditions motivating the enactment of the Arlington

ordinance or its effects on Aurora Highlands. While agreeing that the objectives of Arlington's permit parking ordinance were "laud[able]," the court concluded broadly that the classification made by the ordinance — which it described as constituting "those who reside in the permit area, and those who do not" — did not bear any reasonable relationship to the ordinance's stated objectives. (Pet. 21a.) On this basis, the court found violations of the due process clauses of the Virginia and Federal Constitution, as well as of the equal protection clause of the Federal Constitution. (Pet. 22a.) The court enjoined the County from enforcing the ordinance in Aurora Highlands. (*Id.*)

On appeal, the Supreme Court of Virginia also chose not to discuss the factual record developed by the County. Expressly finding it unnecessary to address arguments based on the provisions of the Virginia Constitution, the Supreme Court concluded that "the ordinance on its face offends the Equal Protection Guarantee of the Fourteenth Amendment." (Pet. 12a.) The court recognized that "[l]ocal governments have a legitimate interest in regulating the cause of the manifold problems which result from parking congestion." (Pet. 11a-12a.) However, asserting that "the cause of such problems is the use of public streets by motorists in general, wherever they live or work," (Pet. 12a), the court determined that "the classification created by this ordinance bears no reasonable relation to its stated objectives". (p. 12a.) On this ground, it affirmed the decision of the trial court.

REASONS FOR GRANTING THE WRIT

The decision of the Supreme Court of Virginia is in direct conflict with countless decisions of this Court sustaining, against equal protection challenge, economic and social legislation enacted by state and local governments whenever that legislation has any rational basis. The

problem of parking congestion addressed by the Arlington ordinance exists in numerous metropolitan areas throughout the United States. The solution embodied by the ordinance has been adopted or is under consideration by several other local governments and represents an important element of the federal government's strategy for combatting air pollution. If allowed to stand, the decision of the Supreme Court of Virginia, along with similar decisions by other lower courts, will inhibit the enactment and implementation of permit parking programs like Arlington's. A decision by this Court reversing the Supreme Court of Virginia is essential to insure that this important tool of transportation control and neighborhood preservation remains available to local communities without any fear that it may be forbidden by the United States Constitution.

1. Many times and over many years, this Court has emphasized that the judgments of legislative bodies, exercising their police powers to promote the welfare of their communities, are entitled to the greatest deference and must be sustained against equal protection challenge unless the classification in question is wholly irrational. As stated in *McGowan v. Maryland*, 366 U.S. 420, 425-26 (1961):

> "Although no precise formula has been developed, the Court has held that the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classfiication rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."

The Court has applied this principle in a long line of cases upholding the widest variety of local legislation, including statutes touching upon such diverse subjects as local business practices, professional qualifications, education, housing conditions and transportation control.[3] Just last term, in fact, in the course of sustaining a New Orleans ordinance that granted two long-time pushcart operators a monopoly on the pushcart business in the French Quarter, the Court reiterated that it "consistently defers to legislative determinations as to the desirability of particular statutory discriminations . . ." *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

Ever since *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 394 (1926), which upheld a zoning ordinance preventing the erection of apartment buildings and factories in certain residential areas, the Court has consistently accepted as a rational basis for challenged legislation the justification present in this case — protecting the living environment of

[3] McCarthy v. Philadelphia Civil Serv. Comm'n, 424 U.S. 645 (1976); Sosna v. Iowa, 419 U.S. 393 (1975); San Antonio School District v. Rodriguez, 411 U.S. 1 (1973); McGinnis v. Royster, 410 U.S. 263 (1973); Schilb v. Kuebel, 404 U.S. 357 (1971); Dandridge v. Williams, 397 U.S. 471 (1970); McDonald v. Board of Elections, 394 U.S. 802 (1969); Allied Stores of Ohio v. Bowers, 358 U.S. 522 (1959); Williamson v. Lee Optical Co., 348 U.S. 483 (1955); Railway Express v. New York, 336 U.S. 106 (1949); A.F. of L. v. American Sash Co., 335 U.S. 538 (1949); Goesaert v. Cleary, 335 U.S. 464 (1948); Kotch v. Board of River Port Pilot Comm'rs., 330 U.S. 446 (1947); Tigner v. Texas, 310 U.S. 141 (1940); South Carolina Hwy. Dept. v. Barnwell Bros., 303 U.S. 177 (1938); Semler v. Dental Examiners, 294 U.S. 608 (1935); Metropolitan Co. v. Brownell, 294 U.S. 589 (1935); Borden's Co. v. Baldwin, 293 U.S. 194 (1934); Sproles v. Binford, 286 U.S. 374 (1932); Silver v. Silver, 280 U.S. 117 (1929); Bryant v. Zimmerman, 78 U.S. 63 (1928); Rast v. Van Deman & Lewis, 240 U.S. 342 (1916); Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911).

local communities against forces that threaten the stability, safety and tranquility of residential life. For instance, in *Berman v. Parker*, 348 U.S. 26 (1954), the Court affirmed the power of the District of Columbia government to raze slum dwellings and replace them by more profitable, privately-owned commercial structures. The Court singled out for special endorsement the goal of an improved living environment for District citizens:

> "We do not sit to determine whether a particular housing project is or is not desirable. The concept of the public welfare is broad and inclusive . . . . The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. In the present case, the Congress and its authorized agencies have made determinations that take into account a wide variety of values. It is not for us to reappraise them." *Id.* at 33.

More recently, in *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974), the Court rejected an equal protection challenge to a zoning ordinance that prohibited more than two unrelated persons from living together in a single dwelling unit. The Court emphasized that it was presented "with economic and social legislation where legislatures have historically drawn lines which we respect against the charge of violation of the Equal Protection Clause if the law be 'reasonable, not arbitrary' . . . and bears 'a rational relationship to a [permissible] state objective.' " *Id.* at 8. The Court then stressed the importance of protecting residential areas from vehicular congestion, noise and polluted air — the very conditions that the Arlington ordinance seeks to eliminate:

> "A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. This goal is a permissible one within *Berman v. Parker, supra.* The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people." *Id.* at 9.

Only last term, in a case where the goal of neighborhood preservation was in conflict with an even more fundamental right than the right of association claimed in *Belle Terre*, the Court sustained against equal protection attack a zoning regulation that excluded from a Detroit neighborhood so-called adult motion picture theaters while permitting theaters showing less objectionable films. *Young v. American Mini Theaters*, 427 U.S. 50 (1976). To justify this asserted infringement on the film distributor's freedom of expression, the prevailing opinion relied on "the city's interest in the present and future character of its neighborhoods." *Id.* at 72.

If anything, the principles affirmed by these cases apply even more forcefully to legislation that controls the parking practices of non-resident commuters. Access to parking — especially free parking near one's place of employment — can hardly be equated with those "fundamental rights," like exercising the franchise, that this Court has held can be restricted only when necessary "to promote a compelling governmental interest."[4] Numerous decisions of the lower federal courts and state courts have held that there is no constitutionally protected right to drive an automobile, much less park it, in the location and manner of one's

[4] Shapiro v. Thompson, 394 U.S. 618, 634 (1969).

choice.[5] To the contrary, this Court has emphasized that "the power of the State to regulate the use of its highways is broad and pervasive," *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 523 (1959), and that traffic regulation is an area "with respect to which the state has exceptional scope for the exercise of its regulatory power," *Southern Pacific Co. v. Arizona*, 325 U.S. 761, 783 (1945). State and local governments routinely forbid trucks to use residential areas, prohibit parking on certain streets for longer than two hours or overnight, and create special parking zones for taxis, buses or emergency vehicles. When challenged in the courts, these commonplace traffic regulations have been consistently affirmed.[6]

Nor can it be seriously claimed that a classification based on residence, like one based on race or wealth, is "suspect" and therefore requires the "strict scrutiny" of a reviewing court.[7] Statutory schemes making available to residents

[5] *E.g.*, Ross v. Gunaris, 395 F. Supp. 623 (D. Mass. 1975); Wall v. King, 109 F. Supp. 198 (D. Mass. 1952); Wells v. Malloy, 402 F. Supp. 856 (D. Vt. 1975); People v. Brown, 485 P.2d 500 (Colo. 1971); State v. Rush, 324 A.2d 748 (Me. 1974).

[6] *E.g.*, City of Madison v. McManus, 171 N.W.2d 426 (Wis. 1969); City of Akron v. Davies, 170 N.E.2d 494 (Ohio 1959); Smallwood v. District of Columbia, 17 F.2d 210 (D.C. Cir. 1927); District of Columbia v. Smith, 93 F.2d 650 (D.C. Cir. 1937); Commonwealth v. Dobbins, 182 N.E.2d 123 (Mass. 1962); Commonwealth v. Sargent, 117 N.E.2d 154 (Mass. 1953); Commonwealth v. Berney, 233 N.E.2d 739 (Mass. 1968); De Pace v. Mayor and Council of Wilmington, 72 A.2d 439 (Del. 1950); State v. Perry, 130 N.W.2d 343 (Minn. 1964); City of Milwaukee v. Hoffman, 138 N.W.2d 223 (Wis. 1965).

[7] The Crystal City commuters are obviously not members of a discrete and insular minority that is entitled to special treatment under the equal protection clause. Some of them, to be sure, live outside Arlington and thus have no formal political say in Arlington affairs. Many of them, however, do live in Arlington and are no less entitled than the residents of Aurora Highlands to make their wishes known at the ballot box every year. The five members of the Arlington County

(continued)

governmental benefits denied to non-residents have repeatedly been sustained against challenge, both in the lower courts and in this Court, based on the same showing of reasonableness required for all other legislative classifications made under the police power.[8]

In this case, a rational basis for Arlington's differing treatment of residents and non-residents is plainly evident both from the stated purposes of the permit parking ordinance and the record developed at trial. Even on the theory (apparently embraced by the Supreme Court of Virginia) that the ordinance is directed solely at the general problem of parking congestion, singling out vehicles operated by non-residents for regulation is clearly reasonable. As the evidence presented by the County established, the cars of non-resident commuters are the predominant cause of parking congestion in neighborhoods such as Aurora Highlands. Surely, Arlington's County Board was entitled to limit its prohibition on parking to the class of vehicles chiefly responsible for congestion and to spare another class or parkers whose contribution to the problem was far less serious. This Court has repeatedly emphasized that

> "Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. *Tigner*

[7] (continued)
Board are elected at large and serve four-year staggered terms; at least one position falls vacant each year. As for Crystal City itself and the commercial and governmental establishments that it houses, these are not likely candidates for adversely discriminatory treatment by the County Board. The Board nurtured the Crystal City project because of its potential for invigorating the County's economy.

[8] McCarthy v. Philadelphia Civil Serv. Comm'n, 424 U.S. 645 (1976) (per curiam); City of Pittsburgh v. Alco Parking Corp., 417 U.S. 369 (1974); Wardwell v. Bd. of Ed. of City School Dist., 529 F.2d 625 (6th Cir. 1976); McClain v. City of South Pasadena, 318 P.2d 199 (Cal. Ct. App. 1957).

> *v. Texas*, 310 U.S. 141. Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. *Semler v. Dental Examiners*, 294 U.S. 608. The legislature may select one phase of one field and apply a remedy there, neglecting the others." *Williamson v. Lee Optical Co.*, 348 U.S. 483, 489 (1955).

Arlington's ordinance, moreover, was not directed merely at parking congestion generally, whenever and wherever it occurred. As even a glance at its statement of objectives demonstrates, the County Board was directly and explicitly concerned with the special problems which that congestion creates when it occurs in residential neighborhoods and is caused by non-resident commuters using neighborhood streets for all-day parking. Under this Court's decisions in *Euclid*, *Berman*, *Belle Terre* and *Young*, *supra*, the County unquestionably was entitled to take measures that would maintain the quality of life in those neighborhoods, and there can be no dispute that the ordinance it enacted was rationally calculated to further that objective. It is almost self-evident that restricting parking by non-resident commuters will have the effect of decreasing littering, noise, hazards to pedestrians and parking infractions and facilitating road maintenance. To the extent that the connection between such a restriction and these benefits to the residential environment is not a matter of common sense, the County proved the point at trial by presenting abundant evidence that the permit parking ordinance had in fact accomplished its stated objectives.

Under the holding of the Court below, however, local governments like Arlington would be powerless to attack the unquestionably serious problems that commuter parking creates for residential neighborhoods without imposing a sweeping ban on on-street parking that applies to residents and commuters alike. The practical effect of any such program would be an even greater deterioration in the quality of life in these neighborhoods. Instead of competing with commuters for on-street parking, residents would now have no on-street parking at all. A program intended to benefit neighborhoods congested by commuter parking would thus have the opposite effect. Because of the program, parking in front of one's own home — which is taken for granted in ordinary residential neighborhoods — would become impossible.

The extreme approach required by the Virginia court — *i.e.*, banning parking by residents in order to attack the problems created by non-resident commuters — is not simply irrational. It ignores the fact that one of the very reasons why Arlington passed its permit parking ordinance was "to protect residents . . . from unreasonable burdens in gaining access to their residences." As the County demonstrated at trial, a serious consequence of commuter parking in Aurora Highlands was a reduction in the on-street parking available for residents and this reduction, in turn, caused substantial hardships. As the County showed, even those residents with driveways need on-street parking for deliveries and guests. (Rec. 179, 233, 242-43, 333, 352, 371, 387, 397, 449, 477.) For residents without driveways, the absence of parking in front of one's house and the time lost searching for an empty parking space represent serious inconveniences — so serious, in fact, that some Aurora Highlands residents decided to incur the expense of building driveways. (Rec. 371, 385, 477.) Thus, even if the permit parking program had no other rational objective, Arlington would clearly have been entitled to recognize the special need of its residents for on-street parking in front of their homes and to eliminate the all-day, every-day commuter parking that had made parking for residents unavailable.

Wholly apart from the goal of enhancing the quality of life in its residential neighborhoods, moreover, Arlington's differing treatment of residents and non-residents was rationally related to the objective of lessening air pollution. As indicated by the EPA representative who testified on behalf of the County, EPA's transportation control program is primarily aimed at commuters who travel long distances to and from work and make a correspondingly large contribution to the pollutants in the Washington area's air. (Rec. 282-83, 291.) Parking restrictions that encourage commuters to use alternative forms of transportation can clearly achieve a far more significant reduction in overall vehicle miles traveled than equivalent restrictions on parking by residents, who use their cars for such strictly local activities as shopping and transporting children to and from school. Unquestionably, Arlington County could rationally choose to concentrate its pollution control efforts on the class of vehicles with the greatest role in creating pollution and leave other classes of automobile users unregulated. Thus, along with its many other benefits to Arlington citizens, the permit parking ordinance served the reasonable and clearly legitimate governmental purpose of improving air quality.

2. The permit parking program at issue in this case is not unique to Arlington County. Counsel for amici know of similar programs that are either underway or under consideration in Charlottesville and Richmond, Virginia; the District of Columbia; Montgomery and Prince Georges Counties, Maryland; Wilmington, Delaware; and Baltimore, Boston, San Francisco and Atlanta.

Nor is the decision of the Supreme Court of Virginia the only instance where implementation of a permit parking program has been halted by the courts. In *State v. Whisman*, 263 N.E.2d 411 (1970), an Ohio lower court held that a permit parking program was unconstitutional because it was contrary to the equal protection clause. On

the same ground, a Superior Court judge in the District of Columbia last year issued a preliminary injunction against implementation of the program in Georgetown and three other District neighborhoods. *Georgetown Association of Businessmen v. District of Columbia*, Civ. Action Nos. 7242-76, *et al.* Three of the amici civic associations, which represent the neighborhoods in question, have intervened in the subsequent proceedings in that case. Even more recently, the permit parking program of Montgomery County, Maryland, where three of the amici associations are from, suffered a severe setback when a Maryland Circuit Court judge held the program unconstitutional. *State of Maryland v. William L. Thompson*, Criminal No. 19018. In yet another case, the validity of Cambridge, Massachusetts' permit parking program is now at issue in an appeal pending before the Supreme Judicial Court. *Commonwealth v. Allen A. Fishman, et al.*, No. 729. The lower court decision in that case sustained the program after initially holding it unconstitutional.

Considering this flurry of lower court litigation, if it grants certiorari, the Court may be assured that it is deciding a case of intense interest to several jurisdictions around the country. Moreover, as the filing of this brief underscores, the constitutional issues presented by Arlington's permit parking ordinance are extremely important to the citizens of numerous metropolitan areas that have adopted, or want to adopt, this important tool of neighborhood preservation and traffic control.

Yet another consideration makes it vitally important for the Court to hear this case. Like the Arlington ordinance, many of the permit parking programs adopted or proposed in other jurisdictions represent an effort to carry forward Federal anti-pollution policies as embodied in transportation control plans issued under the authority of the Clean Air Act. In the course of reviewing such a plan for

metropolitan Boston, the Court of Appeals for the First Circuit has sustained the validity of a ban on on-street commuter parking during morning commuter hours. *South Terminal Corp. v. EPA*, 504 F.2d 646 (1st Cir. 1974). Contrary to the lower court decisions discussed above, the court not only upheld this prohibition but made it clear that its approval was conditioned on the availability of an exemption from the ban for vehicles belonging to residents. *Id.* at 671-72. The principle upheld by this decision — that EPA approved anti-pollution plans may prohibit commuter parking without imposing equally drastic restrictions on residents — will be jeopardized if the decisions of the court below and other courts invalidating permit parking programs are allowed to stand. Granting the petition of Arlington County, therefore, is essential to help eliminate a potentially serious barrier to the effective implementation of federal environmental policy.

CONCLUSION

The petition for certiorari of Arlington County should be granted. Because of the sharpness of the conflict between the decision below and the decisions of this Court, summary reversal of the judgment below may be appropriate.

Respectfully submitted,

WILLIAM H. ALLEN
ROBERT M. SUSSMAN
888 Sixteenth Street, N.W.
Washington, D.C. 20006

Attorneys for Amici Curiae

Of Counsel:
COVINGTON & BURLING
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